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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
ARIZONA-AMERICAN WATER COMPANY,
AN ARIZONA CORPORATION, FOR A
DETERMINATION OF THE CURRENT FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN ITS
RATES AND CHARGES BASED THEREON
FOR UTILITY SERVICE BY ITS ANTHEM
WATER AND ANTHEM/AGUA FRIA
WASTEWATER DISTRICTS

DOCKET NO. WS-01303A-06-0403

Arizona Corporation Commission
DOCKETED

MAR 17 2008

DOCKETED BY

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**ARIZONA-AMERICAN WATER COMPANY
RESPONSE TO MOTION**

I. INTRODUCTION

Arizona-American Water Company ("Arizona-American") hereby responds to the March 13, 2008, "Motion to Open the Record and Schedule a Hearing" filed by the Residential Utility Consumer Office ("RUCO") and the Anthem Community Council ("Council"). RUCO and Council ask the Commission to reopen the record, further delay this case, and provide them another chance to conduct discovery and offer additional evidence and argument concerning a narrow issue. Essentially, each seeks a "do-over," even though each was provided an ample opportunity to, and did, address the issue while the record was open. Further, granting the motion would do irreparable financial harm to Arizona-American, already a financially distressed company. The Judge should deny the motion.

1 **II. PROCEDURAL HISTORY**

2 **A. THE PROCEDURAL HISTORY IS VERY IMPORTANT**

3 Contrary to RUCO's and Council's assertion, the procedural history of this case is very
4 important. In fact, the history documents that these parties have been given a full opportunity to
5 address each issue in this case. These parties may now wish that they had taken better advantage
6 of the opportunities provided to them, but they cannot blame the Commission for their own
7 decisions.

8 **B. OVERALL HISTORY**

9 This case commenced over 21 months ago when, on June 16, 2006, Arizona-American
10 filed with the Arizona Corporation Commission ("Commission") an application for a
11 determination of the current fair value of its utility plant and property and for increases in its
12 rates and charges for utility service in its Anthem Water and Anthem/Agua Fria Wastewater
13 Districts. The Administrative Law Judge ("Judge") subsequently granted intervention to RUCO
14 and the Council.

15 On September 28, 2006, Staff filed a letter stating that the Company's application met the
16 sufficiency requirements set forth in A.A.C. R14-2-103. Hearings were scheduled to begin on
17 May 29, 2007, and to be completed in the next week. This would have allowed ample time to
18 the parties to brief the matter and for the Judge to issue a recommended Opinion and Order in
19 time for the Commission to hear this matter no later than its September 2007 Open Meeting.

20 However, primarily because the Commission wanted to hear additional evidence from
21 Pulte Homes, the developer of the Anthem community, this matter has already been delayed such
22 that the Commission will likely not hear this matter until its April 2008 Open Meeting, a seven-
23 month delay.

1 **C. NORTHWEST VALLEY REGIONAL TREATMENT FACILITY**

2 The Northwest Valley Regional Treatment Facility ("NWVRTF") treats wastewater for
3 Arizona-American's customers in both the Anthem/Agua Fria Wastewater District and the Sun
4 City West Wastewater District.¹ Initially, Arizona-American and Staff agreed to allocate 2.25%
5 of the rate base and expenses associated with this facility to the Anthem/Agua Fria Wastewater
6 District, based on wastewater flows at the end of the test year.² From its initial testimony RUCO
7 opposed any allocation of NWVRTF investment to the rate base for Anthem/Agua Fria
8 Wastewater customers.³ Council supports the originally requested 2.5% allocation.

9 Docket No. WS-01303A-06-0491 was a rate case for Arizona-American's Sun City
10 Water and Sun City West Wastewater District. In that docket, Arizona-American and Staff
11 initially proposed to allocate 97.75% of the rate base and expenses associated with the NWVRTF
12 to the Sun City West Wastewater District. However, on August 28, 2007, after revaluating the
13 issue, Staff testified in the Sun City West Wastewater District case that the appropriate allocation
14 of rate base and expense should be 32% for Anthem/Agua Fria Wastewater and 68% for Sun
15 City West Wastewater. Staff also testified that it would also be proposing this allocation in the
16 Anthem/Agua Fria Wastewater rate case.⁴

17 RUCO was a party to the Sun City West Wastewater case, so it had actual notice on
18 August 28, 2007, that Staff would revise its position in this docket concerning the appropriate
19 allocation of rate base and expense associated with the NWVRTF. Shortly afterward, on
20 September 13, 2008, Council also received actual notice of Staff's intent to revise its
21 recommended allocation. Staff counsel Maureen Scott sent Council attorney Michelle Molinario

¹ Ex. A-3 at 17:17-22

² *Id.*

³ Exhibit R-3 at 14:12 – 15:9.

⁴ Docket No. WS-01303A-06-0491, Tr. 651:7-20.

1 an e-mail that advised Council that Staff would be submitting revised schedules in the
2 Anthem/Agua Fria rate case to increase to NWVRTF allocation.⁵

3 On October 3, 2007, Staff filed its Revised Engineering Report in the Anthem/Agua Fria
4 docket.⁶ Staff witness Katrin Stukov's Report concluded that 32% of the total facility capacity
5 had been built to serve Anthem/Agua Fria Wastewater customers.⁷ Staff also filed revised
6 revenue-requirement schedules on October 3, 2007, which incorporated this revised allocation.⁸
7 Staff's revised rate-design schedules followed on October 4, 2007.⁹

8 On October 9, 2007, the Judge issued a procedural order that noted, among other things,
9 Staff's revised filings concerning the NWVRTF reallocation. The Order provided that "parties
10 shall file their responses, if any, to late-filed exhibits, and any requests for additional hearings, if
11 any, no later than October 24, 2007." On October 12, 2007, the Judge ordered that hearings
12 would reconvene on October 31, 2007. Neither RUCO nor Council asked for a continuance or
13 any other procedural relief. Further, neither RUCO nor Council took advantage of the provided
14 opportunity to file evidence in response to Staff's revised filings concerning the NWVRTF
15 reallocation. RUCO filed nothing. Council filed a pleading that simply said that it would
16 respond to Staff after it was able to "question Staff's witness at the October 31, 2007 hearing
17 date."¹⁰ Council stated further that it would actually "respond in the form of final schedules no
18 later than November 6, 2007 and/or in its Closing Brief."¹¹

19 Additional hearings were held as scheduled in the Anthem/Agua Fria Wastewater docket
20 on October 31, and November 1, 2007. Both RUCO and Council extensively cross-examined

⁵ Please see Exhibit A to this pleading, a copy of a September 14, 2007, e-mail from Staff attorney Maureen Scott to Council attorney Michele Molinaro.

⁶ Exhibit S-17.

⁷ Ex. S-17 at 8; Ex. S-21 at 3 – 5.

⁸ Docket file.

⁹ Docket file.

¹⁰ Intervenor Anthem Community Council's Response to Staff's Notice of Filing, dated October 22, 2007.

¹¹ *Id.*

1 Staff and Arizona-American witnesses concerning the revised NWVRTF allocation. RUCO also
2 provided additional live testimony concerning this issue.¹²

3 Finally, RUCO and Council thoroughly briefed the issue of the proper NWVRTF
4 allocation.¹³

5 **III. DISCUSSION**

6 **A. A DO-OVER IS NOT JUSTIFIED**

7 RUCO has argued from the beginning that none of the NWVRTF rate base should be
8 allocated to Anthem/Agua Fria.¹⁴ RUCO has not changed its position or the basis of its
9 argument.¹⁵ Nor has RUCO suggested in its Motion any new arguments that it has against
10 allocating a portion of the NWVRTF to Anthem/Agua Fria. RUCO's new request is baseless.
11 RUCO admitted at the Commission's March 12, 2008 Open Meeting that it did not want to assist
12 the parties with creating a record on the revised NWVRTF allocation.

13 RUCO had actual notice on August 28, 2007 that Staff would be revising its
14 recommended allocation percentage in the Anthem/Agua Fria rate case. Council had actual
15 notice no later than September 13, 2007. Neither party took any action as a result of these actual
16 notices.

17 Then, on October 3, 2007, Staff filed its Revised Engineering Report and schedules in the
18 Anthem/Agua Fria docket. These filings recommended that 32% of the NWVRTF investment
19 and costs be allocated to Anthem/Agua Fria Wastewater customers. Neither RUCO nor Council
20 took any action as a result of Staff's filing.

¹² Tr. at 1313-18.

¹³ RUCO Brief at 3-6; RUCO Reply Brief at 1-6; Council Brief at 5-7; Council Reply Brief at 2-3.

¹⁴ Exhibit R-3

¹⁵ Compare Exhibit R-3 at 14:12 – 15:9 to RUCO Brief at 3-6 and RUCO Reply Brief at 1-6

1 Next, on October 9, 2007, the Judge provided the parties the opportunity to file responses
2 concerning the NWVRTF allocation and even to request additional hearings. The Judge set an
3 October 24, 2007, deadline to respond or to ask for additional hearings. Neither RUCO nor
4 Council took any meaningful action in response to the Judge's attempt to provide procedural
5 relief. In fact, Council formally declined the opportunity to file additional evidence or to ask for
6 additional hearings. Council stated that it would be satisfied to cross-examine Staff and then
7 "respond in the form of final schedules no later than November 6, 2007 and/or in its Closing
8 Brief."¹⁶

9 Before hearings resumed on October 31, 2007, RUCO had known for nine weeks and the
10 Council for seven weeks that the NWVRTF reallocation would be an issue. Despite this actual
11 knowledge, neither party conducted any discovery concerning the issue.

12 At the hearing, both Council and RUCO did extensively cross-examine both Staff and
13 Arizona-American concerning the revised NWVRTF allocation. RUCO even put on additional
14 direct evidence. Both parties also extensively briefed the issue.

15 A party may be entitled to reopen the record and provide additional argument in certain
16 limited circumstances. If the party was not provided sufficient due process, reopening could be
17 justified, if the issue was timely raised. Here, both parties were provided the opportunity to offer
18 additional evidence and to request additional hearings, but declined the opportunity. Further, if
19 either party did not believe that the Judge's generous accommodation in October 2007 was
20 sufficient, that party could have timely filed a motion for additional relief. Neither party did, so
21 their belated motion should be denied. All parties were well aware that the hearings beginning
22 on October 31, 2007 were the last opportunity to introduce evidence in an already long delayed
23 rate case.

¹⁶ *Id.*

1 A party could also claim that it was ineffectively represented by counsel, so that it was
2 unable to prosecute an effective case and a rehearing is needed. Neither RUCO nor Council
3 makes this claim. Instead, the parties seem to now be arguing that they regret not having
4 conducted discovery and introducing more evidence.

5 At the end of a case, it is rare that a party is completely satisfied with every litigation
6 choice. There is always the witness that should have been called, the question that should (or
7 should not) have been asked, or the argument that might have been more persuasive. However,
8 these regrets have never justified a do-over.

9 A final basis for reopening a case would be newly discovered material evidence. RUCO
10 and Council have not alleged that they have discovered any new material evidence, or that they
11 could not have diligently discovered such evidence in time for the October 31, 2007, hearings.
12 In fact, the parties did not even conduct discovery on the issue of the NWVRTF reallocation.

13 **B. THE MAYES AMENDMENT DOES NOT SUPPORT A DO-OVER**

14 On March 12, 2007, in Docket No. WS-01303A-06-0491, the Commission approved
15 Commissioner Mayes' second amendment, which stated: "The Commission is not determining in
16 this Order how to treat the remaining portion being allocated to the Anthem /Agua Fria
17 Wastewater District in this case." The amendment provides no basis for the Motion.

18 Commissioner Mayes' amendment merely put the parties on notice that the Commission
19 would base its decision on the evidence in this docket (Docket No. WS-01303A-06-0403). This
20 is as it should be. The Commission must base every decision on the evidence in that docket, and
21 may depart from past policy determinations if the evidence so warrants.

22 In this docket, the Commission has ample evidence to consider. In fact, the record in this
23 docket is more complete than in Docket No. WS-01303A-06-0491, where the revised Staff
24 position was not presented until hearings were underway. In this docket, all parties had ample

1 notice of Staff's revised position. They were then provided the opportunity to conduct
2 discovery, and present their own positions through direct testimony, cross-examination, and
3 briefs. RUCO did present direct testimony and cross-examined Staff and Arizona-American
4 witnesses. Council expressly declined the opportunity to present additional evidence, but did
5 conduct thorough cross-examination. Each party extensively argued its position in its brief.

6 All of the issues in this Docket, including the appropriate allocation of the NWVRTF
7 investment and costs, are ripe for the Commission's determination at this time.

8 **C. A DO-OVER WOULD IRREVERSIBLY HARM ARIZONA-AMERICAN**

9 As discussed, this case has already been delayed for at least seven months. Each month
10 of delay has cost Arizona-American \$490,000 in lost revenues, with no way to ever recover these
11 funds.¹⁷ As a result, Arizona-American has already irreversibly forgone \$3.43 million dollars of
12 revenue to which it would otherwise been entitled. In comparison, the additional allocation of
13 NWVRTF to Anthem/Agua Fria has less than a \$50,000 monthly revenue impact on
14 Anthem/Agua Fria customers. Arizona-American will file the next rate case for these districts in
15 April 2008. This means the Commission can fully re-examine this issue in the next rate case and
16 establish new permanent rates only approximately a year following the determination in this
17 Docket.

18 Despite offering no credible basis for their motion, Council and RUCO blithely ask to
19 further delay this case for an unspecified time to accommodate their do-over request. The
20 equities certainly do not support this request. Arizona-American, a financially distressed
21 company, cannot continue on without timely financial relief.

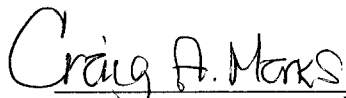
¹⁷ Tr. 1015:10-13.

1 **IV. REQUESTED RELIEF**

2 For all the reasons discussed above, Arizona-American asks that the Judge deny RUCO's
3 and Council's motion.

4 Should the Judge alternatively determine to provide the Motion's requested relief, it
5 should be provided in a manner that substantially reduces the financial hardship to Arizona-
6 American. The motion only concerns rates for Anthem/Agua Fria wastewater customers. The
7 NWVRTF allocation is not an issue for Anthem Water customers. The Judge should still issue a
8 recommended opinion and order in March 2008 that provides final rates for Anthem Water
9 customers. Likewise, interim rates for Anthem/Agua Fria customers should be recommended
10 and approved. Afterwards, the Judge could then provide the opportunity to re-address the single
11 issue of the NWVRTF allocation in a second phase of this case if this issue is found so critical
12 that it cannot await re-examination in the next rate case.

13 RESPECTFULLY SUBMITTED on March 17, 2008.

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1 Original and 13 copies **filed**
2 on March 17, 2008, with:

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9 Copies of the foregoing **delivered**
10 on March 17, 2008, to:

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19 Copies of the foregoing **mailed**
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Craig Marks

From: Maureen Scott [mscott@azcc.gov]
Sent: Wednesday, March 12, 2008 3:11 PM
To: thomas.broderick@amwater.com; craig.marks@azbar.org; Keith Layton; Steven Olea
Subject: FW: Anthem water rate case

Here is a September 14th email with Michele regarding the subject.

From: Maureen Scott
Sent: Friday, September 14, 2007 9:07 AM
To: 'Michele Molinario'
Subject: RE: Anthem water rate case

Michele, we will be asking for a procedural conference and will be filing revised schedules. The issues relates to the proper allocation for the Northwest Valley Regional Facility. The facility is used by both Anthem/Agua Fria and Sun City West. We determined in the Sun City West Wastewater Case that the allocation should be revised downward for Sun City West. Maureen

From: Michele Molinario [mailto:mamolinario@rhhklaw.com]
Sent: Thursday, September 13, 2007 5:11 PM
To: Maureen Scott
Subject: Anthem water rate case

Hi Maureen,

Paul Li called me to let me know that Staff is changing their position on the ratebase. Since we relied heavily on Staff's analysis, can you tell me what's happening so I know where we need to go from here?

Thanks,

Michele Molinario, Esq.
Ridenour, Hienton, Kelhoffer, Lewis & Garth
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